



**Federal Communications Commission
Washington, D.C. 20554**

March 12, 2007

DA 07-1205

In Reply Refer to:

1800B3-KD

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Ms. Cynthia D. Lewis
2405 Essington Road
Joliet, IL 60435

Dorann Bunkin, Esq.
Wiley Rein LLP
1776 K St., N.W.
Washington, DC 20006

In re: WVAZ(FM), Oak Park, IL
Facility ID No. 6588
AMFM Broadcasting Licenses, LLC
File No. BRH-20040802AAV

Application for Renewal of License

Informal Objection

Dear Ms. Lewis and Ms. Bunkin:

This letter refers to: (1) the above-noted August 2, 2004, application of AMFM Broadcasting Licenses, LLC to renew the license of radio station WVAZ(FM), Oak Park, Illinois, and (2) the July 12, 2004, Informal Objection ("Objection") to that application filed by Cynthia D. Lewis. In her Objection, Ms. Lewis alleges that a radio personality has broadcast defamatory remarks about her and her family members on WVAZ(FM) since January of 2002. For the reasons set forth below, we deny Ms. Lewis's Objection and grant the renewal application.

Discussion. In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k)(1) of the Communications Act of 1934, as amended (the "Act"). That section provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Commission's Rules (the "Rules"); and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.¹ If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a

¹ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”²

In her Objection, Ms. Lewis claims, that since 2002, radio personality Tom Joyner has slandered her family in a “soap opera type program” aired on WVAZ(FM) entitled, “It’s Your World.” Ms. Lewis states that her “reason for objecting to the license renewal ... is the lack of ethical management and the continuous harassment that has been condoned by station management ...for the past [four] years.” Additionally, Ms. Lewis indicates that WVAZ(FM)’s on-air announcements of its license expiration and the Commission’s renewal process were inadequate because, according to Ms. Lewis, WVAZ(FM) did not provide public notice until the “final week of June 2004.”

The role of the Commission in overseeing program content is limited. The First Amendment to the United States Constitution and Section 326 of the Act prohibit the Commission from censoring program material or interfering with broadcasters’ free speech rights. The Commission does regulate broadcast content where federal statutes direct it to do so. For example, the Commission enforces the statutory prohibition on the broadcast of obscene, indecent and profane material contained in 18 U.S.C. § 1464. However, allegations of defamation are outside the Commission’s jurisdiction. “Such allegations are properly the subject of private defamation actions [under state law], not of Commission licensing proceedings.”³ Accordingly, we have no legal basis to take action based on Ms. Lewis’ programming allegation.

Further, Ms. Lewis only presents us with a bare assertion, unsupported by a sworn declaration, that WVAZ(FM) violated the public notice requirements set forth in Section 73.3580 of the Commission’s Rules.⁴ She has not offered any probative evidence that would lead us to conclude that WVAZ(FM) did not make the required on-air announcements, such as sworn declarations from persons who listened to the station for a significant time during the relevant period.⁵ We also note that Ms. Lewis herself received sufficient notice to enable her to submit her Objection before the license renewal application was filed, an Objection we are fully considering with this letter. Accordingly, we find that Ms. Lewis has failed to raise a substantial and material question of fact which establishes a *prima facie* case for denial of the license renewal application for WVAZ(FM).⁶ As such, we deny the Informal Objection.

² 47 U.S.C. §§ 309(k)(2), 309(k)(3).

³ *Jacor Broadcasting of Tampa Bay, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 1826 (MB 1992) (citing *Anti-Defamation League of B’nai B’rith*, Memorandum Opinion, 4 FCC 2d 190, 191 (1966). See also *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179 (1986) (subsequent history omitted) (narrowing the range of non-FCC related misconduct to be considered when assessing an applicant’s character qualifications).

⁴ See 47 C.F.R. § 73.3580.

⁵ See, e.g., *Northwest Broadcasting, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 3289 (1997).

⁶ Even assuming, *arguendo*, that WVAZ(FM) failed to fully comply with the notice requirements, this sole defect would not warrant the dismissal of its renewal application. Indeed, in many cases where an applicant has violated Section 73.3580, the Commission has held that the appropriate remedy is to “require[] the applicant to correctly republish the local notice and advise the Commission it has done so.” See *Marri Broadcasting, L.P.*, Memorandum Opinion and Order, 16 FCC Rcd 10,772 (MB 2001) (citing *Voice of Calvary Education Ministries, Inc.*, Hearing

Conclusion. We have evaluated the WVAZ(FM) renewal application pursuant to Section 309(k) of the Act,⁷ and we find that WVAZ(FM) has served the public interest, convenience, and necessity during the subject license term; there have been no serious violations of the Act or the Rules and there have been no other violations which, taken together, constitute a pattern of abuse.

In light of the above discussion, and pursuant to Section 309(k) of the Act, and Sections 0.61 and 0.283 of the Rules,⁸ the Informal Objection filed on July 12, 2004, by Cynthia D. Lewis IS DENIED, and the application (File No. BRH-20040802AAV) of AMFM Broadcasting Licenses, LLC, for renewal of license for WVAZ(FM) IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: AMFM Broadcasting Licenses, LLC

Designation Order, 4 FCC Rcd 1203 (MB 1989), and *Helen Broadcasting Co.*, Letter, 5 FCC Rcd 2829 (1990)). However, in this case, the complaint fails to make a *prima facie* case of a violation.

⁷ 47 U.S.C. § 309(k).

⁸ 47 U.S.C. § 309(k); 47 C.F.R. §§ 0.61, 0.283.